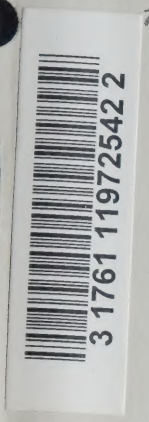

Background Paper

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COMMERCIAL EXPRESSION: ADVERTISING AND THE CONSTITUTION

James R. Robertson
Law and Government Division

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INTRODUCTION

Section 2(b) of the *Canadian Charter of Rights and Freedoms* guarantees freedom of expression, including freedom of the press and other media of communication. The scope of the word "expression" is still in the process of being determined by the courts; however, the Supreme Court of Canada, adopting the reasoning of a line of Canadian cases and recent developments in American jurisprudence, has decided that it does include "commercial expression."

The implications of the Supreme Court's decisions in the *Bill 101* and *Irwin Toy Limited* cases remain to be seen. The basic concept is now established, although future cases will develop and elaborate upon it; for example, recent federal legislation prohibiting the advertising and promotion of tobacco products was successfully challenged in Quebec on the basis of infringing the right to freedom of commercial expression, although the case is currently under appeal.

DEFINITION OF COMMERCIAL EXPRESSION

"Commercial expression" - or "commercial speech" as it is usually termed in the United States - is a relatively new concept. Many forms of expression are "commercial" in the sense that they are motivated by the desire to sell a product, whether it is a newspaper or a work of art; it can hardly be contended, however, that all such works constitute commercial speech, merely because they are produced for economic gain.

Commercial speech, unlike other forms of expression, generally proposes an economic transaction; its message is to promote an exchange of money in return for goods or services. Commercial expression is thus generally considered to involve advertising and promotional activities - in any of their myriad forms. This is not to say, however, that all advertising should be characterized as commercial expression: advocacy advertising, whether it be on the subject of free trade or drinking and driving, is generally not commercial speech since more than a mere commercial transaction is involved. Whether a particular case involves commercial speech or some other form of expression will often be self-evident, but it is not possible to delineate fully the limits of what constitutes commercial expression or to set out precisely the boundaries between it and other forms of speech.

THE AMERICAN CONCEPT OF COMMERCIAL SPEECH

It is useful to review briefly the American experience with the First Amendment protection of "commercial speech." Prior to the 1970s, the U.S. courts did not recognize commercial speech as having any claim to constitutional protection; indeed, the idea was rejected in the few cases that even addressed the issue.

In 1976, however, the U.S. Supreme Court repudiated the notion that commercial speech was unprotected by the First Amendment guarantee and in a series of cases over the next several years expanded and developed the concept of commercial speech. Although some critics feel that several of its recent judgments indicate a weakening of the Supreme Court's commitment to the freedom of this form of expression, the concept is now well established in American law. At the same time, the American cases have been careful to qualify their protection; commercial speech is protected, but to a lesser degree than are other forms of speech.

The test for commercial speech was articulated by the U.S. Supreme Court in 1980 in *Central Hudson Gas and Electric Corp.* v. *Public Service Commission of New York* as follows:

> In commercial speech cases, then, a four-part analysis has developed. At the outset, we must determine whether the

> expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than necessary to serve that interest.

While the application of this test has been criticized in specific cases, the approach is generally accepted. The U.S. courts have applied the commercial speech concept in a variety of situations, and to a range of activities. The first Supreme Court case was instigated by consumers who challenged a state law prohibiting advertising of the prices of pharmaceutical products. Several other cases concerned the advertising of products such as abortion services and birth control devices, thereby raising a multitude of other constitutional issues. Many of the cases that reached the Supreme Court involved advertising by lawyers and other professional groups. The Court took the view that the traditional proscription of such activity could not be supported on constitutional grounds. A blanket prohibition on advertising by professionals was unwarranted and overly broad; professionalism could be maintained by other means, and certain advertising should be permitted, and would in fact be of assistance to the general public.

The earlier cases tended to focus on the informational function of commercial speech as informing the listener, whose interest, it was said, "may be as keen, if not keener by far, than his interest in the day's most urgent political debate." The rationale for a First Amendment protection of commercial speech was said to be this interest of the individual consumer, and society generally, in the free flow of commercial information so as to be able to make informed economic choices.

The American courts implied that the state could not suppress truthful and non-misleading advertising of lawful products on the grounds that the information to be conveyed would have a harmful effect. Governments regulate advertising for a variety of reasons, such as to prevent false and misleading information, and it was accepted that this could and should continue. The difference would be in the level of judicial scrutiny to which such governmental regulation would be subjected: it would no longer be sufficient for a government to assert its

right to regulate advertising like other commercial activities, without some justification. In other words, the level of permissible governmental regulation is subject to judicial scrutiny.

The emergence of the concept of commercial speech in the United States in the 1970s can be traced to various developments, including the consumer protection movement of the 1960s and 1970s and the desire to receive information about commercial products. It also reveals a suspicion of governmental control and paternalistic censorship of consumer information, as well as ideas of individual autonomy and free market economics.

Traditionally, free speech has been primarily concerned with the rights of the speaker. Speech, however, implies an audience. In commercial speech cases, the concern is not so much with the rights of the advertiser to convey a message, as with the rights of listeners to have access to information. In this respect, commercial speech differs in a quite fundamental way from other forms of expression, and provides support for the argument that commercial speech is entitled to a lesser amount of constitutional protection. It is also possible to argue, however, that advertising is important in maintaining the economic system on which the American political system is based, and, therefore, it does contribute indirectly to political free speech. Also, as noted above, advertising and commercial expression probably affect more people than do purely political speech or discussion.

The concept of commercial speech also developed in response to the pervasiveness of advertising in modern American society. The treatment of commercial speech is premised on particular views of the purpose and scope of advertising, which is seen by some as manipulative, and by others as an integral and useful part of the allocation of resources in a free market economy. On the one hand, advertising is said to create a demand for a particular product; on the other, it is said merely to attempt to persuade consumers to choose from among competing brands. Moreover, there are different types and forms of advertising - television, radio, print, billboard, etc. - as well as different strategies - for instance, life-style advertising, comparative brand advertising, and so forth.

THE CANADIAN EXPERIENCE

Before the adoption of the *Charter of Rights and Freedoms* in 1982, Canada did not have an explicit constitutional guarantee of freedom of expression and cases involving such

freedom tended to turn on the division of legislative powers and the "implied bill of rights." In any event, most of the freedom of speech cases with which the courts dealt before 1982 involved political speech rather than commercial expression.

With the introduction of the constitutionally-entrenched *Charter of Rights and Freedoms* and the American development of the commercial speech concept, Canadian courts have begun to develop their own approach to commercial expression. As noted above, the U.S. courts have decided that while commercial speech is protected under the Constitution, it is to be given a lesser level of protection. In Canada, however, section 1 of the *Charter of Rights and Freedoms* allows freedoms to be subject to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." The U.S. Constitution lacks such a clause, although the courts have developed this kind of approach to constitutional interpretation.

Since 1982, various provincial courts have dealt with the arguments involving commercial expression. The issue has arisen in connection with advertising by lawyers and other professionals, television advertising directed at young people, and even the rights of prostitutes to communicate their willingness to ply their trade. Some courts rejected the notion that commercial expression was protected under the Charter, arguing that it contributes nothing to democratic government, and that to extend protection to it would be to trivialize the value of freedom of expression. Other courts adopted the American approach and applied constitutional protection. Until the 1988 decision involving Quebec's Bill 101, the Supreme Court of Canada had not ruled on the existence of a right of commercial expression in Canada.

Although commercial signs and trade names were at issue, the *Bill 101* case was more directly concerned with language rights and the permissible extent of governmental regulation of language. Nevertheless, in the course of its decision, the Supreme Court dealt with the issue of freedom of commercial expression and established clearly that it is protected by the Charter.

The Supreme Court of Canada concluded that the guarantee of freedom of expression in section 2(b) of the *Charter of Rights and Freedoms* does not exclude commercial expression: as the Court put it, the guarantee of freedom of expression in the Charter "cannot be confined to political expression, important as that form of expression is in a free and

democratic society... [P]olitical expression is only one form of the great range of expression that is deserving of constitutional protection because it serves individual and societal values in a free and democratic society."

The Supreme Court of Canada went on to say:

> Over and above its intrinsic value as expression, commercial expression which, as has been pointed out, protects listeners as well as speakers, plays a significant role in enabling individuals to make informed economic choices, an important aspect of individual self-fulfilment and personal autonomy. The Court accordingly rejects the view that commercial expression serves no individual or societal value in a free and democratic society and for this reason is undeserving of any constitutional protection.

This is, however, only the first part of the analytical process: even though commercial expression is *prima facie* protected under the Charter, it is still possible to abridge that protection under section 1 of the Charter. This involves the same kind of analysis as set out in the *Central Hudson Gas and Electric Corp.* case: a governmental interest must be shown, it must be substantial, the measures chosen must advance that interest, and they must be no more extensive than necessary.

In April 1989, the Supreme Court of Canada delivered its second decision on commercial speech. *Irwin Toy Ltd.* v. *Quebec* involved consumer protection legislation of the Province of Quebec which prohibited commercial advertising directed at persons under the age of 13. In a 3-2 decision, the Court held that the legislation, while infringing the right to freedom of expression in section 2(b) of the Charter, was justified under section 1. The majority noted: "Children are not as equipped as adults to evaluate the persuasive force of advertising, and advertisements directed at children would take advantage of this. ... The concern is for the protection of a group which is particularly vulnerable to the techniques of seduction and manipulation abundant in advertising."

In a strongly-worded dissent, McIntyre J. disagreed, arguing that no case had been made to justify a "total prohibition aimed at children below an arbitrarily fixed age." He argued that in any event freedom of expression is too important to be lightly cast aside or limited except

where urgent and compelling reasons exist and then only to the extent and for the time necessary to protect the community.

The majority undertook a comprehensive analysis of the impugned legislation. It considered whether the objective sought by the ban on commercial advertising was pressing and substantial, whether the means chosen were proportional to the ends in the sense of being rationally connected to them, whether the ban impaired rights as minimally as possible, and whether it possessed any deleterious effects. After reviewing the materials submitted, the Court concluded that the prohibition was reasonably based, and constituted sufficient justification under section 1 of the Charter. The majority noted that advertisers remain free to direct their message to parents and other adults. The Court was careful not to second-guess the legislature; as it explained:

> ... [T]he evidence sustains the reasonableness of the legislature's conclusion that a ban on commercial advertising directed to children was the minimal impairment of free expression consistent with the pressing and substantial goal of protecting children against manipulation through such advertising. While evidence exists that other less intrusive options reflecting more modest objectives were available to the government, there is evidence establishing the necessity of a ban to meet the objectives the government had reasonably set.

In 1991, Mr. Justice Chabot of the Quebec Superior Court declared the federal *Tobacco Products Control Act* inoperative, partly on the basis that it violated the freedom of expression guarantee in the Charter. The Act purported to prohibit the advertising and promotion of tobacco products. The Court held that tobacco advertising is protected as it conveys a message and does not fall within the category of unprotected forms of expression. The Act's provision requiring the imposition of unattributed health warnings also violates freedom of expression as such freedom necessarily includes the freedom to remain silent. The Court found that the restrictions in the Act could not be justified under section 1 of the Charter.

Mr. Justice Chabot conceded that the dangers of tobacco use were a sufficiently pressing and substantial concern to justify limitations on freedom of expression, but he concluded that the Act's effects were not proportionate to its stated objectives. The Court noted that the Act is not directed at tobacco use but rather at tobacco advertising; the evidence did not establish

that a ban on tobacco advertising would result in a decline in consumption. It was also felt that the exemptions in the Act (such as advertisements for foreign tobacco products in imported publications) were arbitrary and inconsistent with the stated purpose of the legislation. The fact that the Act imposed a total ban on tobacco advertising was significant. The Court concluded that the legislation constituted an extremely serious and disproportionate impairment of all principles inherent in a fair and democratic society and an unacceptable form of censorship and social engineering. The decision has been appealed by the federal government.

A number of cases have considered restrictions and prohibitions on advertising by professionals, including doctors, dentists and lawyers. In *Rocket* v. *Royal College of Dental Surgeons of Ontario*, the Supreme Court of Canada decided that freedom of expression was infringed by a regulation classifying as professional misconduct all advertising by dentists that was not expressly permitted. The restrictions imposed by the College were held to prohibit legitimate forms of expression and purposely to limit its content. The Court said that the infringement could not be justified under section 1 of the Charter. Although the maintenance of professionalism and the protection of the public are clearly of sufficient importance to be capable of overriding a Charter right, the regulation at issue failed the proportionality test. Its effect was to prohibit expression, and to deny or restrict consumers' access to information relevant or necessary to their choice of dentists; it restricted useful information without justification.

On the basis of this decision, it would seem that professional bodies can impose some restrictions on advertising by their members, but that such limits must be rationally based and not impair freedom of expression any more than necessary.

Other recent cases have considered freedom of expression in relation to signs on businesses. These usually involve municipal bylaws. While sign restrictions have been upheld in some cases, in others the courts have struck them down. A 1992 decision of the Quebec Superior Court found that a City of Montreal bylaw that prohibited so-called "erotic" signs outside strip clubs and sex shops was contrary to the Charter. Designed to prevent sexist signs, the bylaw was attacked as being an indirect attempt to legislate morality.

NATURE OF COMMERCIAL SPEECH

Traditionally, the principle of free speech focused on political speech and ideas. Particularly in a democracy, it is important that individuals have the right to speak freely and openly, even if their ideas do not correspond with those of society.

In the case of commercial speech, somewhat different considerations apply. As indicated above, one of the grounds on which commercial speech has been protected is the listener's interest in obtaining information. In theory, the more information one has, the more rational one's decisions will be. The listener's interest is also important in the case of political and artistic speech, but in those forms of expression, the interests of the speaker are predominant. A political system based on a supply and demand economy, where individual choices by consumers collectively affect the whole of society, has an interest in protecting the information available to its citizens. On this basis, the informational value of commercial speech is of central importance.

Notwithstanding this theory, much of the advertising that bombards the average North American gives minimal information. Usually the emphasis is on image or life-style; where information is involved, it often seems mundane and unimportant. It is fairly unusual to come across clear cases of advertising where consumer interest in obtaining information predominates, as, for example, cases where professionals advertise their fees so that the consumer will be in a better position to select a service. Yet the extension of protection to the vast majority of advertising that is relatively uninformative may be the price that must be paid to ensure protection of more significant commercial expression.

Governments have long regulated advertising and other forms of commercial expression on the basis, among other things, that they have an interest in restricting false or misleading information. Even extending constitutional protection to it does not mean that commercial speech will be totally unregulated. No fundamental right or freedom is completely untrammelled; there must always be limits to ensure that one person's rights do not interfere with another's.

Consequently, extensive regulation of advertising and other forms of commercial expression can be expected to continue, though it will now be subjected to judicial scrutiny.

Governments will have to justify their regulatory actions and to explain why they chose particular measures. As the U.S. cases have indicated, the state must establish that a substantial governmental interest will be achieved by restrictions on commercial speech. Controls on the freedom of speech, including commercial speech, cannot be arbitrary or capricious, or motivated by irrelevant considerations.

A party seeking to restrict or prohibit commercial expression under section 1 of the Charter has the burden of justifying the restriction. This means that it will no longer be sufficient to impose a restriction on commercial speech without some explanation or reason. It will then be up to the courts to analyze this reason and the method of regulation chosen. The courts will remain respectful of the government's responsibility to govern. As the Supreme Court of Canada said in the *Irwin Toy* case, the courts will not second-guess the legislators and substitute their own decisions, so long as there is a sound evidentiary basis for the government's conclusions:

> If the legislature has made a reasonable assessment as to where the line is most properly drawn, especially if that assessment involves weighing conflicting scientific evidence and allocating scarce resources on this basis, it is not for the court to second-guess.

The American jurisprudence also requires that the regulatory technique must be proportional to the governmental interest concerned and carefully designed to achieve the state's goal. It must directly advance the state interest involved; a measure which was ineffective or offered only remote support for the government's purpose would not be sustained. In other words, a sledgehammer cannot be used to kill an ant.

It is important to consider whether alternative, less restrictive measures would achieve the same result; that is, while we accept that restrictions on freedom of speech are sometimes required, they should be no more extensive than necessary. This aspect of the issue will most likely arise in cases where an outright ban or severe restrictions are imposed; in such cases, it might be possible to demonstrate that less drastic restrictions - for example, on the type, location or frequency of advertisements - could have achieved the government's goal.

There may, for instance, be grounds for treating television and radio differently from other media, on the basis that they are much more intrusive, cannot be ignored as easily,

and are very persuasive, particularly with respect to young people; limiting or banning television and radio advertising, therefore, could be justified in cases where regulation of other media could not. Similarly, the Supreme Court of the United States refused to protect direct solicitation by lawyers of potential clients ("ambulance-chasing"), although in other decisions it endorsed greater freedom of advertising by professionals.

In addition to imposing conditions on commercial speech, government might require "counterspeech": cigarette advertisements, for example, have been required for many years to carry a health warning, and similar warnings have been proposed for advertisements of alcoholic beverages. Other forms of counterspeech could include a "contrary advertising" campaign - funded by the government or by the industry involved - designed to offset the message of the advertisements. From a theoretical point of view, counterspeech would be the ideal solution, as it both avoids restrictions on freedom of speech and ensures that the consumer has full information.

Court review of governmental regulation, including the particular measures chosen, raises the spectre of judicial interference in the legislative process. The concern is that the courts will second-guess the government and substitute their own judgments for those of elected officials and bureaucrats, notwithstanding their declarations to the contrary. Yet, at the same time, if the courts hesitate to criticize government, there is no check on actions of the state. The issue of the fine line between judicial review and judicial law-making is by no means unique to commercial speech cases, although the very subjective analysis involved in such cases creates scope for specific problems.

One of the problematic areas of commercial expression is the treatment of advertising of such products as tobacco and alcohol. If smoking or drinking alcohol was declared illegal, there would be no issue of freedom to advertise it. It has been argued that if a legislature has the power to prohibit an activity altogether, then it must have the power to impose levels of regulation short of prohibition, on the basis that the greater power normally includes the lesser. Thus, since tobacco products or alcohol could be made illegal, the government should be able to limit or even ban their advertising. Against this position, however, is the fact that virtually all activities could theoretically be banned; and, therefore,

almost all advertising could be banned, thus undermining the very existence of freedom of commercial expression.

In the case of prohibition of advertising or promotion of dangerous products, such as alcohol and tobacco, the arguments likely will revolve around the purpose and extent of the ban. The government will presumably claim that the legislation is necessary in order to reduce consumption in Canada. Even if the court is able to establish a causal relationship between advertising and consumption, however, it will also have to determine whether the government could have chosen less intrusive measures, such as the prohibition of life-style advertisements or a requirement for stronger health warnings.

CONCLUSIONS

Freedom of speech is an important concept to many Canadians. While most people can appreciate the importance of freedom of political, artistic or religious speech, it is more difficult to understand the importance of freedom of advertising and commercial speech. Nevertheless, the Supreme Court of Canada has ruled that commercial expression is not excluded from the protection of section 2(b) of the *Charter of Rights and Freedoms*, although the extent of such protection remains to be fleshed out in subsequent cases.

The fact that commercial speech, while covered by the guarantee of freedom of expression in section 2(b), is still subject to the justification of section 1 also means that, as in the United States, different standards could be applied to commercial expression than to other forms of expression. In other words, Canadian courts could follow the American precedent of granting commercial expression less constitutional protection than political, artistic, religious, and other forms of expression. This difference in treatment is premised on the idea that commercial speech is somehow less important than other types of expression, that it is more resilient, that its truth can perhaps be more easily verified, and that regulation - at least to some extent - does not compromise the same values, or not in the same ways.

Obviously, any analysis of commercial speech involves a balancing of interests: the legitimacy of government regulations intended to protect consumers from harmful

commercial speech must be balanced against the belief that a free market in ideas and information is necessary to an informed and autonomous consumer.

SELECTED REFERENCES

Braun, Stefan. "Should Commercial Speech be Accorded Prima Facie Constitutional Recognition under the Canadian Charter of Rights and Freedoms?" 18 *Ottawa L. R.*, 1986, 37-53.

Coase, R.H. "Advertising and Free Speech." 6 *The Journal of Legal Studies*, 1977, 1-34.

Curtis, James M. "Advertising Regulated Products." 1985 *Ann. Surv. Am. L.*, 1986, 621-638.

Doberman, Amy. "Advertising for Abortion Services and Contraceptives." 1985 *Ann. Surv. Am. L.*, 1986, 655-69.

Farber, Daniel A. "Commercial Speech and First Amendment Theory." 74 *Northwestern University Law Review* 372, 1979.

Jackson, Thomas H. and John Calvin Jeffries, Jr. "Commercial Speech: Economic Due Process and the First Amendment." 65 *Virginia L. R.* 1, 1979.

Kurland, Philip B. "Posadas de Puerto Rico v. Tourism Company: 'Twas Strange, 'Twas Passing Strange; 'Twas Pitiful, 'Twas Wondrous Pitiful." *The Supreme Court Review* 1 [1986].

Lee, William E. "The Supreme Court and the Right to Receive Expression." *The Supreme Court Review* 303, 1987.

Lively, Donald E. "The Supreme Court and Commercial Speech: New Words with an Old Message." 72 *Minnesota Law Review* 289, 1987.

Machina, Kenton F. "Freedom of Expression in Commerce." 3 *Law and Philosophy* 375, 1984.

Miller, Matthew L. "The First Amendment and Legislative Bans of Liquor and Cigarette Advertisements." 85 *Columbia L. Rev.* 632-655, 1985.

Sharpe, Robert J. "Commercial Expression and the Charter." 37 *University of Toronto Law Journal*, 1987, 229-259.

"Symposium: Commercial Free Speech and the Canadian Charter of Rights and Freedoms." *Canadian Business Law Journal*, Vol. 17, No. 1, September 1990.

Tomkins, Eileen O. "Attorney Advertising." 1985 *Ann. Surv. Am. L.*, 1986, 639-53.

Weinberg, Jonathan. "Constitutional Protection of Commercial Speech." 82 *Columbia L. R.* 720, 1982.

SELECTED CASES

Bates v. *State Bar of Arizona*, 433 U.S. 350 (1977).

Cabaret Sex Appeal Inc. v. *Montreal (City)*, 1 September 1992, [1992] A.Q. no. 1600 (Superior Court of Quebec).

Central Hudson Gas & Electric Corp. v. *Public Service Commission of New York*, 447 U.S. 557 (1980).

Devine v. *Quebec (Attorney General)* (1988), 55 D.L.R. (4th) 641, [1988] 2 S.C.R. 790, 90 N.R. 48 (Supreme Court of Canada).

Ford v. *Quebec (Attorney General)* (1988), 54 D.L.R. (4th) 577, [1988] 2 S.C.R. 712, 90 N.R. 84 (Supreme Court of Canada).

Griffin v. *College of Dental Surgeons of British Columbia* (1989), 64 D.L.R. (4th) 652, [1990] 1 W.W.R. 503, 40 B.C.L.R. (2d) 188 (B.C. C.A.).

Institute of Edible Oil Foods v. *Ontario* (1989), 64 D.L.R. (4th) 380n, 71 O.R. (2d) 158n, 45 C.R.R. 378 (Ont. C.A.).

Irwin Toy Ltd. v. *Attorney-General of Quebec*; *Moreau, Intervenant*; *Attorney-General of Canada, Mis-en-cause* (1989), 58 D.L.R. (4th) 577, 25 C.P.R. (3d) 417, [1989] 1 S.C.R. 927 (Supreme Court of Canada); reversing (1986), 32 D.L.R. (4th) 641 (Que. C.A.).

Posadas de Puerto Rico Associates v. *Tourism Company of Puerto Rico*, 106 S.C. 2968 (1986).

R. v. *Jahelka and Attorney General of Canada (intervenor)*; *R.* v. *Stagnitta and Attorney General of Canada (intervenor)* (1987), 79 A.R. 44, 54 Alta. L.R. (2d) 1 (Alta. C.A.).

R. v. *Pinehouse Plaza Pharmacy Ltd.* (1991), 62 C.C.C. (3d) 321, [1991] W.W.R. 554, 89 Sask. R. 47 (Sask. C.A.).

R. v. *Skinner* (1987), 35 C.C.C. (3d) 203, 79 N.S.R. (2d) 8, 58 C.R. (3d) 137 (N.S. A.C.).

Re Grier and Alberta Optometric Association et al. (1987), 42 D.L.R. (4th) 327, [1987] 5 W.W.R. 539, 53 Alta. L.R. (2d) 289 (C.A.).

Re Klein and Law Society of Upper Canada; *Re Dvorak and Law Society of Upper Canada* (1985), 50 O.R. (2d) 118, 16 D.L.R. (4th) 489 13 C.R.R. 120 (Ont. Div. Ct.).

Re Law Society of Manitoba and Savino (1983), 1 D.L.R. (4th) 285 23 Man. R. (2d) 293 (Man. C.A.).

RJR MacDonald Inc. v. *Canada (Attorney-General)*, (1991) 82 D.L.R. (4th) 449 (Que. Sup. C.A.)

Rocket v. *Royal College of Dental Surgeons of Ontario* (1990), 71 D.L.R. (4th) 68, [1990] 2 S.C.R. 232, 111 N.R. 161 (Supreme Court of Canada).

Reference re Sections 193 and 195.1(1)(c) of the Criminal Code, [1987] 6 W.W.R. 289 (Man. C.A.).

Virginia State Board of Pharmacy v. *Virginia Citizens Consumer Council*, 425 U.S. 748 (1976).